

1 SB330
2 206764-3
3 By Senators Orr, Ward, Albritton, Waggoner, Williams, Price,
4 Scofield, Barfoot, Stutts, Gudger, Chambliss, Roberts,
5 Sessions, Allen, Livingston, Reed, Marsh, Butler, Holley,
6 Jones, Elliott, Chesteen, Givhan and Whatley
7 RFD: Finance and Taxation Education
8 First Read: 04-MAY-20

8 SYNOPSIS: This bill would provide civil immunity for
9 business entities, health care providers,
10 educational entities, churches, governmental
11 entities, and cultural institutions operating in
12 this state, as well as individuals associated with
13 these entities, from certain damages claimed by
14 individuals who allege that they contracted or were
15 exposed to Coronavirus, during a declared state of
16 emergency.

17 This bill would also provide immunity for
18 certain health care providers during the
19 performance or provision of health care services or
20 treatment that resulted from, was negatively
21 affected by, or was done in support of or in
22 response to the Coronavirus pandemic or the state's
23 response to the pandemic.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to civil immunity; to provide legislative
3 findings; to provide definitions; to provide civil immunity
4 for certain entities and individuals from certain damages
5 claimed by individuals who allege that they contracted or were
6 exposed to Coronavirus during a declared state of emergency;
7 to provide civil immunity for certain health care providers
8 relating to the performance of certain health care services or
9 treatment during the Coronavirus pandemic; to provide for a
10 statute of limitations for certain claims; and to provide for
11 retroactive effect.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. The Legislature finds and declares the
14 following:

15 (1) Providing reasonable protections from the risk
16 and expense of lawsuits to businesses will help encourage
17 businesses to remain open and reopen and that providing such a
18 safe harbor to businesses that operate reasonably consistent
19 with applicable public health guidance will help ameliorate
20 the social harms of a closed economy and the resulting
21 unemployment.

22 (2) The Coronavirus has put, and will continue to
23 put, a significant strain on health care facilities, health
24 care providers, and health care resources of this state; the
25 Coronavirus has undermined, and will continue to undermine,
26 the ability to deliver patient care in the traditional,
27 normal, or customary manner; and our health care facilities,

1 health care professionals, and their supporting workers need
2 protection to respond to this pandemic and to do what they can
3 do to continue to provide treatment and services for the
4 people of Alabama.

5 Section 2. (a) For purposes of this act, the
6 following terms shall have the following meanings:

7 (1) APPLICABLE PUBLIC HEALTH GUIDANCE. Guidance
8 provided in any proclamation, order, or rule of the Governor
9 or the Alabama Department of Public Health that is applicable
10 to the type of covered entity and to the health emergency
11 claim at issue.

12 (2) BUSINESS ENTITY. A person or group of persons
13 employing one or more persons performing or engaging in any
14 activity, enterprise, profession, or occupation for gain,
15 benefit, advantage, or livelihood, whether for profit or not
16 for profit, including entities incorporated as nonprofit
17 corporations pursuant to Chapter 3 of Title 10A, Code of
18 Alabama 1975, self-employed individuals, business entities
19 filing articles of incorporation, partnerships, limited
20 partnerships, limited liability companies, as well as foreign
21 corporations, foreign limited partnerships, foreign limited
22 liability companies authorized to transact business in this
23 state, business trusts, and other organizations, or their
24 assigns.

25 (3) COVERED ENTITY. Any of the following:

26 a. A business entity.

27 b. A health care provider.

- 1 c. An educational entity.
- 2 d. A church.
- 3 e. A governmental entity.
- 4 f. A cultural institution.
- 5 g. Any director, officer, trustee, manager, member,
- 6 employee, or agent of the covered entity with respect to any
- 7 act or omission performed while acting on behalf of the
- 8 covered entity.

9 (4) CHURCH. A bona fide duly constituted religious
10 society or ecclesiastical body of any sect, order, or
11 denomination, or any congregation thereof. The term also
12 includes ministers, church staff, or other employees of the
13 institution.

14 (5) CORONAVIRUS. Coronavirus disease 2019, commonly
15 abbreviated as "COVID-19," for which the Governor declared a
16 public health emergency on March 13, 2020, or any mutation
17 thereof that is declared a public health emergency under the
18 Emergency Management Act.

19 (6) CULTURAL INSTITUTION. An organized and permanent
20 nonprofit or public or private institution in this state
21 operated by, or a division of, a nonprofit corporation, trust,
22 association, education institution, or governmental entity,
23 that is primarily educational, scientific, historic, or
24 aesthetic in purpose, and that owns, borrows, cares for,
25 studies, archives, or exhibits cultural property. The term
26 includes art, history, science and natural history museums,

1 archives, libraries, historical societies, historic sites, and
2 science and technology centers.

3 (7) DAMAGES. Economic damages, non-economic damages
4 for mental anguish and emotional distress, compensatory
5 damages, consequential damages, punitive damages, and any
6 other damages arising from any injury, death, or property
7 damage or otherwise.

8 (8) EDUCATIONAL ENTITY. Any public or private pre-K
9 and K-12 school or public or private two-year or four-year
10 institution of higher education.

11 (9) EMERGENCY MANAGEMENT ACT. The Alabama Emergency
12 Management Act of 1955, Section 31-9-1, et seq., Code of
13 Alabama 1975.

14 (10) GOVERNMENTAL ENTITY. The state, a county, or a
15 municipality or any instrumentality of the state, a county, or
16 a municipality.

17 (11) HEALTH CARE PROVIDER. Those facilities,
18 professionals, and personnel including, but not limited to,
19 the following:

20 a. Any health care provider as that term is defined
21 in Section 6-5-542(1) or Section 6-5-481(1)-(8), Code of
22 Alabama 1975.

23 b. Any health care facility licensed or approved in
24 this state, including, but not limited to, any facility
25 licensed or approved by the Alabama Department of Public
26 Health or mental health facility certified by the Alabama
27 Department of Mental Health, including any health care

1 facility or pharmacy operating and providing services pursuant
2 to the provisions outlined in the Governor's proclamation of
3 April 2, 2020, and any support personnel of the facility or
4 pharmacy.

5 c. Any medical or health care professional,
6 individual, or entity holding a license, registration, permit,
7 certification, or approval, including a temporary emergency
8 license, registration, permit, certification, or approval, to
9 practice a health care profession or occupation in this state,
10 including under the federal Public Readiness and Emergency
11 Preparedness Act and any declaration of the Department of
12 Health and Human Services in accordance with that act, under
13 any emergency proclamations, orders, or rules, adopted by a
14 licensing board or agency pursuant to authorizing emergency
15 proclamations or executive orders, or otherwise in response to
16 the coronavirus, including any support personnel of the
17 professional, individual, or entity.

18 (12) HEALTH CARE SERVICES OR TREATMENT. Any health
19 care service or treatment defined by existing law and Section
20 6-5-540 et seq., Code of Alabama 1975.

21 (13) HEALTH EMERGENCY CLAIM. Any claim that arises
22 from or is related to Coronavirus. All such claims, no matter
23 how denominated, shall be considered a health emergency claim
24 for purposes of this Act. The term includes, but is not
25 limited to, any cause of action that is related in any manner
26 to either or both of the following:

1 a. The actual, alleged, or feared exposure to or
2 contraction of Coronavirus from the premises of a covered
3 entity or otherwise related to or arising from its operations,
4 products, or services provided on or off-premises.

5 b. The covered entity's efforts to prevent or delay
6 the spread of Coronavirus including, but not limited to, any
7 of the following:

8 1. Testing.

9 2. Monitoring, collecting, reporting, tracking,
10 tracing, disclosing, or investigating exposures or other
11 information.

12 3. Using or supplying precautionary equipment or
13 supplies such as personal protective equipment.

14 (14) SERIOUS PHYSICAL INJURY. A death or an injury
15 that requires either in-patient hospitalization of at least 48
16 hours, permanent impairment of a bodily function, or permanent
17 damage to a body structure.

18 Section 3. (a) Notwithstanding any other provision
19 of law, a covered entity shall not be liable for any damages,
20 injury, or death suffered by any person or entity as a result
21 of, or in connection with, a health emergency claim that
22 results from any act or omission of the covered entity.

23 (b) Subsection (a) does not apply if the claimant
24 proves by clear and convincing evidence that the covered
25 entity caused the damages, injury, or death by acting with
26 wanton, reckless, willful, or intentional misconduct.

1 (c) In those instances where liability is
2 established as required by subsection (b), and the acts or
3 omissions do not result in serious physical injury, a covered
4 entity's liability shall be limited to actual economic
5 compensatory damages, and in no event shall the covered entity
6 be liable for non-economic or punitive damages.

7 (d) A party asserting a health emergency claim
8 alleging wrongful death is only entitled to an award of
9 punitive damages.

10 Section 4. (a) This section applies to both of the
11 following causes of action that accrue before the effective
12 date of this act:

13 (1) A health emergency claim for which a court holds
14 that neither Section 3 nor the liability limiting provisions
15 of any gubernatorial emergency order applies.

16 (2) Any cause of action relating to an act or
17 omission of the health care provider during the performance or
18 provision of health care services or treatment that resulted
19 from, was negatively affected by, was negatively impacted by a
20 lack of resources caused by, or was done in response to the
21 Coronavirus pandemic or the state's response to the pandemic,
22 for which a court holds that neither Section 5 nor the
23 liability limiting provisions of any gubernatorial emergency
24 order applies.

25 (b) For any health emergency claim or cause of
26 action under subsection (a), the following provisions shall
27 apply:

1 (1) Notwithstanding any other provision of law, as a
2 matter of law, a covered entity shall not be liable for
3 negligence, premises liability, or for any non-wanton,
4 non-willful or non-intentional civil cause of action to which
5 this section applies, unless the claimant shows by clear and
6 convincing evidence that the covered entity did not reasonably
7 attempt to comply with the then applicable public health
8 guidance.

9 (2) Notwithstanding any other provision of law, for
10 a cause of action to which this section applies, a covered
11 entity shall not be liable for damages from mental anguish or
12 emotional distress or for punitive damages, but may be liable
13 for economic compensatory damages in a cause of action that
14 does not involve serious physical injury.

15 (3) This section does not prohibit an award of
16 punitive damages for wrongful death claims, but no other
17 damages shall be allowed for such claims.

18 Section 5. (a) Absent wanton, reckless, willful, or
19 intentional misconduct, a health care provider is not liable
20 for any damages, injury, or death alleged to have been caused
21 by an act or omission of the health care provider during the
22 performance or provision of health care services or treatment
23 that resulted from, was negatively affected by, was negatively
24 impacted by a lack of resources caused by, or was done in
25 response to the Coronavirus pandemic or the state's response
26 to the pandemic.

1 (b) If a court determines that the immunity afforded
2 in this section does not apply to a health care provider, this
3 section may not be construed to supersede, amend, or modify
4 any other law, emergency proclamation, order, rule, or
5 governing legal standards or procedures for health care
6 providers relating to the performance or provision of health
7 care services or treatment provided by the health care
8 provider, including the Alabama Medical Liability Act of 1987
9 or the Medical Liability Act of 1996, or any amendment to or
10 judicial interpretation thereof.

11 (c) In those instances where liability is
12 established as required by subsection (a), and the acts or
13 omissions do not result in serious physical injury, a health
14 care provider's liability shall be limited to actual economic
15 compensatory damages, and in no event shall the health care
16 provider be liable for non-economic or punitive damages.

17 Section 6. Nothing in this act shall be construed to
18 preempt, remove, displace, repeal, or limit in any way any
19 immunity, defense, or right that exists under existing law
20 that would be applicable to any covered entity in a cause of
21 action filed on or after the March 13, 2020. This section
22 confirms that the immunity provided by this act is in addition
23 to and cumulative of any other immunity, defense, and right
24 that exists under law.

25 Section 7. This act shall be construed in pari
26 materia with the Emergency Management Act and with any

1 emergency order or proclamation of the Governor relating to
2 the Coronavirus and immunity from civil lawsuits.

3 Section 8. A health emergency claim under Section 3
4 or a claim under Section 4 or 5 must be filed not later than
5 two years after the date of the damages, injury, or death.

6 Section 9. The provisions of this act shall not
7 affect the right of any person to receive or claim benefits
8 otherwise available under the Workers' Compensation Act.

9 Section 10. The provisions of this act are
10 severable. If any part of this act is declared invalid or
11 unconstitutional, that declaration shall not affect the part
12 which remains.

13 Section 11. The provisions of this act shall be
14 retroactive and apply to causes of action filed on or after
15 March 13, 2020.

16 Section 12. The immunity and other provisions
17 provided in this act shall terminate December 31, 2021, or one
18 year after a declared health emergency relating to Coronavirus
19 expires, whichever is later, except that any civil liability
20 arising out of acts or omissions related to health emergency
21 claims or claims under Section 5 where the act or omission
22 occurred during the operation of this act shall be subject to
23 the provisions of this act in perpetuity.

24 Section 13. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.